**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION.**

**CRIMINAL APPEAL NO. 518 OF 2000**

Shashikant Laxminarayan Sharma ..... Petitioner.

versus

The State of Maharashtra ..... Respondents.

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Mrs. D.M. Shah advocate appointed in place of Mrs. Sonia Bankapur for appellant-accused.

Mrs. U.V. Kejariwal APP for the State.

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**CORAM ; V.G.PALSHIKAR &**
**ANOOP V. MOHTA, JJ.**

**DATED; 9TH SEPTEMBER, 2004.**

**ORAL JUDGMENT ( Per Palshikar J.);**

1. Being aggrieved by the order dated 6-3-2000 passed in Sessions Case No. 795 of 1996 convicting the appellant/accused, the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. In this case the Court had appointed Mrs. Sonia Bankapur as advocate to plead on behalf of the appellant who was unable to defend himself but was given legal aid. Today when the matter came up for

hearing it was informed that Mrs. Sonia Bankapur is on long leave and would not be able to attend this court to defend the appellant. We therefore requested Mrs. D.M.Shah to plead on behalf of the appellant. She accepted our request and after careful examination of the record, made her submissions before us. It was with the assistance of Mrs. D.M. Shah and Mrs. U.V.Kejariwal APP we scrunised the record and re-appreciated the evidence on record, which reappreciation disclosses the case of the prosecution as under :

3. The accused was married to the complainant by Hindu rites and was living with her at the time when the incident occured. The incident is of 25-4-1996 when around 4 p.m. the accused took the complainant-his wife and their child of one year and eight months for a sort of picnic in film city. After having a round around there for about three hours, they were sitting near a tree and the child was playing by the side of the accused and his wife. The intersay between the wife and the husband through a discussion which ultimately flaired up the accused who inflicted several blows on the person of wife by a sharp knife. On her pleading that the child atleast should be spared, he

inflicted three stab wounds to the child of one year and eight months resulting the intestine of the child coming out of the stomach. He then left the complainant and her daughter there and went away. The complainant gathered her health and courage lifted her child, scraped for help which came little late. She narrated to the first available person for help that she was assaulted by her husband along with daughter. Police arrived and they were taken to the hospital and treated and by the grace of almighty, both of them survived from the fetal stabing inflicted by the accused and it was her misfortune to depose against her husband in court.

4. The prosecution examined inlcuding the complainant ten witnesses in this case to prove that the brutal assault by accused to his wife and child was solely with the intention to kill them. The learned trial Judge on appreciation of the entire evidence on record, accepted the victim, the sole eye witness, the wife’s deposition as it was subsequently corroborated on all material particulars by other cogent evidence and convicted the accused under various sections as mentioned above. It is this order of conviction which is impugned by the accused in this appeal.

6. Mrs. D.M.Shah advocate appointed for the appellant, contended that the conviction is based on uncorroborated testimony of victim. There is no other eye witness except the word of victim. There is nothing to connect the accused with the crime. Refering extensively to the recital of quarrel between the man and the wife, the learned counsel observed that taking into consideration the bitterness enimity between the parties, the possibility of the wife deliberately blaming the husband cannot be ignored. In such circumstances, the conviction on the sole testimony of the intersted victim is not proper in law. She also highlighted certain infirmithy which according to her existed in the evidence and required disbeliving the testimony of the victim. As against this, Mrs. Kejariwal the learned APP highlighted the heinous of the crime, the screaming and planning of the accused by pointing out the peculiar circumstances in which the assault was done. She contended that the accused taken them away from the home, took them to the film city, waited till darkness to come, and by taking them to the lonely spot, brutly assaulted both the wife and the child. She then pointed out several circumstances which subsequently corroborated the testimony of the

victim and therefore contended that the order of conviction as passed by the learned trial Judge was proper and was liable to be confirmed. We have to consider this rival contentions in the light of the evidence led by the prosecution in the shape of ten witnesses as mentioned above.

7. P.w.1 is the victim, who naturally was the eye witness and has given a very detailed account of their relationship as also the demands and torture for dwory, which ultimately culminiating into the brutal stabbing by the accused to her and the child. We will analyse the evidence of this witness separately. P.w.2 is the doctor who admitted the victim in the hospital. P.w.3 is the security officer, who saw the victim lying in a pool of blood and crying for help by telling that she has been stabbed by her husband. This testimony of this witness is further corroborated by P.w.4, who was immediatley seen. P.w.4 is the security guard who heard the victim saying that she was stabbed by her husband. He therefore proves the immediately disclosure of the fact of assault by the victim. P.w.5 is the panch witness who proves the recovery of articles of victim and examination of these articles definitely corroborates the claim of P.w.1 of being

assaulted at the place where she says that she was assaulted. P.w.6 is another panch witness in whose presence the recovery of blood stained knife and clothes was made at the instance of the accused. This recovery apart from proving connection of the accused to the crime, also corroborates the claim of the victim as to how she was assaulted and how property was taken away by the accused after the assault. That property is seized and was proved in the court by this witness. The items recovered tally with the items mentioned by the victim P.w.1 in her statement as items taken away by the accused after assault.

9. P.w.7 is the unfortunate father of the victim who gives a clear description of the manner in which the marriage took place and ultimately led to torture and harassment and the assault on his daughter. Para 2 of his deposition clearly spells out the harassment. This witness apart from corroborating what has been stated by the victim substantially proves the fact that the accused tortured his wife willfully, which violated the provisions of Dowry Prohibition Act. P.w.8 is Dr. Ramesh. He examined both the child and the victim P.w.1. He noted serious injuries and in para 5 he has observed thus.

> "If both the patients would not have received medical treatment in time, both the patients would have lost their lives due to multiple injuries. Only serious patients are admitted in Intensive Care Unit."

It will thus be seen that the injury inflicted by the accused on victim exactly corresponds to the description of attack made on her by the accused as given by the victim. This therefore is a clinching, corroborating, intrinsic medical evidence to the deposition of victim P.w.1. P.w.9 is the Surgeon who performed surgery on both the mother and the child and has given the description as to how serious the surgery was. P.w.10 is the investigating officer who has proved the necessary documents and told the court in the manner in which the investigation was conducted. This therefore is the corroborating and connecting circumstantial evidence believing which the learned trial Judge found the accused guilty.

10. We will now consider the testimony of P.w.1 the wife who was the victim of that assault. As in our opinion this testimony is of sterling value and is

liable to be accepted without any corroboration though we have factually noted above that there is substantial corroboration available in other evidence referred to above in forgoing paragraphs.

11. The victim has given a graphic description as to how her marriage with her husband settled, how they led the peaceful married life initially, how the accused became imperil and started showing his cruel nature by harassing and beating the victim for not fulfilling his lust for money. She then talks the court how the accused had diverted his lust of lush to another woman which further resulted in a mental agony to the victim. Then she narrates the incident of 25-4-1996. She then tells us how she was taken to the film city, how she was taken to mudh island, how they saw some shooting of some T.V. serial and cinema and spent happily three hours there. After the round of film city for three hours, the victim was lying down near one tree exhausted with angry. The accused kept driving motor cycle around her in half circle which created apprehension in the mind of the victim and at that time the sun has set and darkness was settled there and what happened thereafter is better considered in the words of the victim itself.

> Suddenly accused inflicted the blows of sharp weapon on my abdomen first. I was warding off the blows with my both hands. Accusedhad inflicted about 10 blows on my abdomen and chest. He also assaulted me with sharp weapon on both the sides of the chest, on my left side throat near trachela, under the left ear i.e. upper portion fo the neck and on my left cheek. Accused also assaulted me with sharp weapon my my left side ankle and on the left side knee, on my right upper thigh."

Then she stated that the accused left them there with no one to attend and while going took away the purse which the victim had. She then tells what the purse contained. She was exhaustively cross examined and there is nothing in the cross examination which would require disbelieving even a single word of this witness.

12. On each material particulars deposed to by this witness, there is corroboration available. The witness has stated that she was assaulted by sharp weapon for

ten times or more and described the places in which the stab was given. Each that place has an injury which is deposed to by the doctor who examined her. There is therefore intrinsic evidence to corroborate the testimony of this witness on the point of assault and the manner of assault. Then there is ample corroboration coming forth from the testimony of P.ws 3 and 4 who was the first individuals helped both of them, stating that she and her child was assaulted by the husband. This statement is further corroborated by the investigating officer while he proved the police statement recorded by the polioce after the victim was available to make statement in the hospital. Therefore there is substantial corroboration to the evidence of victim on each material particulars.

13. The injuries were very serious as will be seen from the testimony of the doctor who examined her and the surgeon who treated them. Even if other corroboration is considered necessary it exists in abundance in this case as we have pointed out earlier.

14. In this case valuable assistance were rendered both by the advocate appointed for the accused Mrs. D.M.Shah and the Ld. APP Mrs. Kejariwal. We

therefore quanitified the fees payable to each of them as Rs. 1500/- for this appeal.

15. In our opinion, there is no reason whatsoever to interfere with the order of conviction and sentence as passed by the learned trial Judge in any manner. In the result, therefore, the appeal fails and it is dismissed.

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